

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RAUL ESTRADA,

Petitioner,

v.

No. 14-cv-0500 KG/SMV

**JAMES JANECKA and
GARY K. KING,**

Respondents.

**ORDER OVERRULING PETITIONER'S OBJECTIONS,
ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND RECOMMENDED
DISPOSITION, DISMISSING THE PETITION WITH PREJUDICE,
AND DENYING AS MOOT MOTION FOR APPOINTMENT OF COUNSEL**

THIS MATTER is before the Court on Raul Estrada's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [Doc. 1] ("Petition"), filed May 23, 2014. On reference by the undersigned, *see* [Doc. 3], the Honorable Robert Hayes Scott, United States Magistrate Judge, filed his Proposed Findings and Recommended Disposition [Doc. 9] ("PF&RD") on November 18, 2014.¹ Judge Scott recommended dismissal because the claims are time-barred. [Doc. 9] at 5. Petitioner filed objections to Judge Scott's PF&RD on December 3, 2014, asserting that he was prejudiced by various due process violations. [Doc. 12]. Respondents filed a response to Petitioner's objections on December 16, 2014, requesting that the Court overrule Petitioner's objections and adopt the PF&RD. [Doc. 13].

¹ The case was reassigned to the Honorable Stephan M. Vidmar, United States Magistrate Judge, as pretrial judge on December 23, 2014. [Doc. 15].

Section 636(b)(1)(B) provides that “a judge may [] designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.” 28 U.S.C. § 636(b)(1)(A). The district judge shall make a *de novo* determination of those specific portions of the proposed findings or recommendations to which specific objection is made. 28 U.S.C. § 636(b)(1). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1).

Petitioner’s objections argue the substance of his claims that were previously raised in his Petition. *See generally* [Doc. 12]. Petitioner also contends that Respondents do not dispute that he has exhausted his “state-court remedies.” [Doc. 12] at 4. However, Petitioner fails to address the basis of the recommended dismissal—the untimeliness of his 28 U.S.C. § 2254 petition. Judge Scott thoroughly reviewed the state court record, examined the filing dates of Petitioner’s various motions therein, and considered the statute of limitations for federal habeas corpus petitions filed by state prisoners. The record was unequivocal: Petitioner failed to file his § 2254 petition within the one-year deadline imposed by § 2244(d)(1).

Having considered *de novo* Petitioner’s objection and Judge Scott’s analysis and recommendation, the Court concludes that Petitioner’s objections are not well-taken and should be denied. Therefore, the Court will adopt the Magistrate Judge’s Proposed Findings and Recommended Disposition [Doc. 9], deny the Petition [Doc. 1], and dismiss this civil proceeding

with prejudice. As the case will be dismissed, the Court will deny Petitioner's pending motion for appointment of counsel [Doc. 11] as moot.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner's objections [Doc. 12] are **OVERRULED** and the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 9] are **ADOPTED** and

IT IS FURTHER ORDERED that Petitioner Estrada's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [Doc.1] is **DENIED**, and the case is **DISMISSED with prejudice**.

IT IS FURTHER ORDERED that Petitioner Estrada's Motion for Appointment of Counsel [Doc. 11] is **DENIED as moot**.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE